

STRYKER, TAMS & DILL

TWO PENN PLAZA EAST
NEWARK, N.J. 07105

(201) 491-9500

TELECOPIER
(201) 491-9692

DENNIS C. LINKEN
(201) 491-3839

ONE WORLD TRADE CENTER
SUITE 7967
NEW YORK, NY 10048

(212) 432-9180

June 28, 1996

Via Federal Express

William F. Caton, Secretary
Federal Communications Commission
2033 M Street, NW
Room 222
Washington, D.C. 20054

RECEIVED
JUL 11 1996
FCC MAIL ROOM

Re: In the Matter of Implementation of the Pay Telephone Reclassification and
Compensation Provisions of the Telecommunications Act of 1996
CC Docket No. 96-128

Dear Secretary Caton:

Our office represents the New Jersey Payphone Association ("NJPA"). NJPA is an organization of non-local exchange company payphone providers who provide pay telephone service to customers in New Jersey. NJPA members will be significantly affected by the proposed rule-making commenced by the Federal Communications Commission in the above-captioned matter, and we therefore wish to submit the enclosed comments with respect thereto.

DOCKET FILE COPY ORIGINAL

Should any questions arise as to this matter, please do not hesitate to contact us.

Very truly yours,


Dennis C. Linken

DCL:jel

encs. (Original + 10 copies; electronic version on diskette [WP 5.1])

cc: Common Carrier Bureau, Enforcement Division (two copies)
Barbara B. Silkworth, President, NJPA (w/enc.)
Mike Spaeth, Executive Director, NJPA (w/enc.)

MAILED 100
JUL 11 1996

0710

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED
JUL 17 1996
FCC MAIL ROOM

In the Matter of)

Implementation of the)
Pay Telephone Reclassification)
and Compensation Provisions of the)
Telecommunications Act of 1996)

CC Docket No. 96-128

COMMENTS
OF
NEW JERSEY PAYPHONE ASSOCIATION

The New Jersey Payphone Association ("NJPA") is an organization of non-local exchange company ("non-LEC") payphone providers who provide pay telephone service to New Jersey customers. NJPA members are small companies; indeed, many are "Mom and Pop" firms. [The largest, interestingly, is but 1/500th the size of Bell Atlantic-New Jersey, Inc. ("Bell") — the predominant local exchange company ("LEC") in New Jersey, and also the overwhelmingly most significant payphone provider in the State.]

NJPA wishes to comment upon the Notice of Proposed Rulemaking ("NPRM") commenced by the Federal Communications Commission ("FCC" or "Commission") with respect to payphone service providers ("PSPs"). In general, NJPA supports many of the proposals and tentative conclusions set forth by the Commission in its proposed rulemaking. Many of the actions suggested by the FCC are long overdue, and NJPA applauds the efforts of the FCC to implement those provisions of the

Telecommunications Act of 1996¹ as they affect the pay telephone industry. NJPA will address specific provisions of the NPRM. Before doing so, however, NJPA wishes to provide some general background with regard to the issues as they impact upon its members.

NJPA wholeheartedly agrees with the fundamental thrust of the 1996 Act and the NPRM. NJPA's members seek to develop a competitive marketplace in which New Jersey consumers can experience the full benefits of open and real competition. Many of the issues addressed by the FCC in the NPRM have been raised previously by NJPA (as discussed below). Thus, NJPA welcomes the FCC's efforts to address the problems experienced by the independent payphone industry.

The primary nature of the complaints raised by NJPA and its members surrounds the need for a "level playing field" *vis a vis* independent payphone providers ("IPPs") and incumbent LEC payphone providers. Relief falls into basically three areas: the need to provide adequate compensation to IPPs; a need to address the improper subsidies utilized by the incumbent LECs; and a need to address the anti-competitive actions of the LECs toward competitive IPPs. Such anti-competitive actions would, under even ordinary circumstances, be intolerable. However, when one recognizes that they are fostered by the largest payphone providers against their tiny competitors, such actions must be viewed as nothing short of outrageous.

IPPs seek only to compete, on a fair basis, with the incumbent LECs, primarily Bell operating companies ("BOCs"). In New Jersey, the predominant incumbent LEC, Bell Atlantic-New Jersey, Inc. ("BA-NJ") has improperly subsidized its payphone

¹Pub. L. No. 104-104, 110 Stat. 56 (1996) (codified at 47 U.S.C. § 276) (the "1996 Act").

division and has subjected its payphone competitors to discriminatory treatment, despite law to the contrary.² IPPs are forced to take service from their largest competitor; BA-NJ is in the unique position of being, at one and the same time, the largest payphone provider in New Jersey and yet the sole supplier of payphone services to its competitors. NJPA respectfully suggests that the steps proposed to be taken by the Commission so as to prevent abuses to the independent payphone industry at the hands of the LECs are the minimum necessary to do so. NJPA also believes that the actions proposed by the FCC with regard to providing compensation to payphone providers for all calls is necessary and crucial if a competitive industry is to thrive.

NJPA's comments will be directed to the paragraphs set forth as indicated.

COMPENSATION FOR EACH AND EVERY INTRASTATE AND INTERSTATE CALL ORIGINATED BY PAYPHONES

Scope of Payphone Calls Covered by this Rulemaking

Paragraphs 16 through 23

As noted by the Commission, the 1996 Act requires that PSPs be fairly compensated for all calls originated through their payphones.³ NJPA does not dispute the FCC's conclusion that "fair" compensation should not include per call compensation for 0+ calls, given the fact that such compensation is already received through agreements with interexchange carriers ("IXCs"). However, we note that the volume of 0+ calls handled by IPPs is extremely small compared with the volume of

²See, Telecommunications Act of 1992, L. 1999, c. 428, codified at N.J.S.A. 48:2-21.16 *et seq.*

³47 U.S.C. § 276(b)(1)(A).

other calls for which either no revenue at all is received or as to which a loss is sustained. In a recent sampling of data compiled by NJPA for submission to the New Jersey Board of Public Utilities ("BPU"), it was determined that the total amount of 0+ calls handled by IPPs in New Jersey amounted to only 2.9% of the total volume of calls.⁴ The next class of calls handled by IPPs consists of "free calls", such as 411, emergency calls and the like. This group of calls makes up another 3% of the total volume of calls handled. As to "free calls," no revenue at all is received by IPPs. Astoundingly, the third class of calls handled by IPPs, dial around and subscriber 800 calls, accounted for nearly 27% of the total traffic handled by IPPs. However, in New Jersey, dial around calls generate no revenue and therefore no profit. At the same time, direct dialed coin calls account for the largest portion of non-LEC payphone providers' business, making up almost 67% of all calls carried. Yet, coin calls actually generate a loss to New Jersey IPPs, because the IPPs' costs of providing direct-dialed coin calls, unlike BA-NJ, are not subsidized.⁵

NJPA strongly supports the FCC's conclusion that standards for determining fair compensation for all access code calls, subscriber 800 and other toll-free number

⁴The information compiled reflects data collected from 20 "across the board" non-LEC payphone companies, ranging from the smallest to the largest, and reflects more than 1,000,000 calls. It is, therefore, representative of the IPP industry in New Jersey as a whole. Please see Exhibit A annexed hereto.

⁵NJPA recognizes that the Commission intends to deal with the question as to rates in a separate rulemaking proceeding. NJPA will respond more directly in that proceeding with regard to rates charged for 0+ calls by IPPs. However, at this juncture, NJPA wishes to point out the direct and critical relationship between the volume and nature of calls carried by IPPs and the charges assessed for 0+ calls. As noted, 0+ calls make up less than 3% of all calls. However, this small group of calls is forced to bear the brunt of the costs incurred by IPPs for all of the other calls for which no revenue is received or which generate a loss. NJPA therefore believes that requiring compensation for dial around calls, and implementing a fair rate for direct dialed coin calls, will result in eliminating the problem perceived by the FCC with respect to 0+ calls.

calls, as well as debit card calls, must be implemented. Dial around calls placed through IPP payphones generate revenue for all parties involved in the call — with one glaring exception — the IPP. The LEC and the IXC's involved in such calls all receive revenue in one form or another. Only the IPP does not. And yet, were it not for the placement and operation by the IPP of its payphone, the call could not have been made in the first place. Compensation for access code calls, subscriber 800 and other toll-free number calls, as well as debit card calls, is fair and appropriate; it is required under the law; and it is economically equitable.

NJPA also supports the Commission's tentative conclusion that compensation should be awarded with respect to international calls as well. Once again, the same rationale holds true. Where an international call is made through an IPP payphone, fundamental fairness (even aside from the 1996 Act) requires that compensation be awarded to all parties without whom the call could not have been placed.

The Commission also posits the question as to whether a national rate for local coin calls should be set. In the alternative, the Commission asks whether it should establish guidelines for same. First, as will be discussed further below, NJPA is of the strong belief that LECs in general, and BA-NJ in particular, subsidize the rate charged for local coin calls. In a few states, regulatory commissions have examined the proper level of the local coin rate and have concluded that it should be set at approximately 35¢. In most other states, however, the rate has been frozen at a lower level — typically 25¢, and in New Jersey, only 20¢ — well below what many feel to be the true cost. States' reluctance to address this area, much less to raise the local coin rate, is easily understandable and is typically grounded in social concerns.

However, while the LECs have the ability to easily subsidize the cost of the local coin rate call (through either local basic residential or business rates or through intraLATA toll call rates), IPPs do not have the same luxury. Because of IPPs' inability to obtain revenue from dial around calls, they are able to subsidize the local coin call rate only in one area: 0+ calls. As a result, however, 0+ calls are charged at rates higher than IPPs would like to see and, indeed, at a level sufficient to cause the Commission to issue a rulemaking proceeding focusing on that area. The only sensible solution to the whole problem is to raise the rate of a local coin call to its appropriate level. NJPA respectfully suggests that the FCC is in the best, and perhaps the only position to do so.

The Commission expresses concern over the possible fraudulent use of auto dialers to generate repeated 800 calls so as to improperly increase dial around compensation. NJPA cannot argue that the Commission's concern has at least some validity. The telecommunications market is thriving, and there are, no doubt, some who will utilize fraudulent means to obtain unjustified compensation. It goes without saying that NJPA strenuously and vociferously rejects such means and will work ardently to prevent IPPs in New Jersey from doing so. If individuals are found to be operating fraudulently, they should be dealt with swiftly and affirmatively. However, NJPA respectfully suggests that the Commission "should not throw out the baby with the bath water." Dial around compensation is economically justified; indeed, it is a necessity. It is required under the 1996 Act. The many legitimate, law-abiding IPPs, who seek to provide valuable services to the calling public at fair and proper rates should not be penalized for the anticipated improper actions of a few. It

may well be that the Commission's fear does not materialize. If so, the public will be well served. On the other hand, if the Commission's concern is well grounded, violators should be dealt with appropriately.

Entities Required to Pay Compensation

Paragraphs 24 through 28

The Commission asks for comments with regard to those entities which should be directed to pay compensation for dial around calls. As the Commission notes, a per-call compensation requirement is generally desirable, and NJPA supports such an arrangement. To implement a per-call compensation requirement, two methods are offered: A "carrier-pays" procedure or a "set use fee" procedure. NJPA supports the implementation of a "carrier-pays" mechanism. It agrees with the FCC's tentative conclusion that such a proposal (that is, a "carrier-pays" scheme) will likely result in lower transaction costs than would be imposed by way of a "set use fee" compensation arrangement. NJPA is also concerned, as indicated by the FCC, about the impact upon transient payphone callers (requiring them to deposit coins in addition to providing call-billing information) should a "set use" fee be implemented.

Per-Call Compensation Amount

Paragraphs 35 through 40

The Commission posits the query as to the appropriate level of dial around compensation. It would be difficult to point to just one particular rate and argue that such rate is the only proper amount of fair compensation to be awarded. Instead, it is likely that a "range" of reasonable rates might be appropriate. What then might serve as guidance to establish such a range? We understand that the Commission

previously looked at a number of alternative surrogates to utilize with respect to the dial around compensation rate for interstate calls. One such surrogate would be the AT&T commission on 0+ calls. On an overall basis, we believe that the level of such commissions approximates a range somewhere between 40¢ and 60¢. NJPA respectfully suggests that the median — 50¢ — be utilized as a fair level of compensation. NJPA would note, however, that the level of compensation should be net of any administrative costs which might be imposed by carriers for collection and distribution purposes.

Perhaps another alternative would be to establish the dial around compensation level at the local coin call rate (at the level at which it should be set [see discussion above]). The argument for this position is simple: It really represents the minimum amount of compensation to be received for the lowest priced call from consumers. In essence, we are suggesting that a "minimum rate" be established for calls made through payphones. However, it should be borne in mind that the average compensation per local coin call would obviously be more than just the simple local coin call rate for the initial period. If the initial period coin call rate should be 35¢ or 40¢, and if the average revenue per coin call were necessarily to be higher, this might indirectly add validity to the use of the AT&T commission range. In effect, a range of 40¢ - 60¢ falls within the same ballpark. NJPA therefore suggests that the mid-point of 50¢ be utilized.

NJPA would like to add one comment to the above discussion. We have discussed NJPA's belief that the local coin rate should be raised to its appropriate level. The justification for same lies in the 1996 Act's direction that "all payphone

service providers [should be] fairly compensated for each and every completed intrastate and interstate call using their payphone....' 47 U.S.C. § 276(b)(1)(A). If the Commission chooses not to do so, however, NJPA respectfully suggests that it must "compensate" by providing dial around compensation at the upper end of a reasonable range. Thus, it may well be that dial around compensation, in the absence of setting the local coin call rate at its proper level of 35¢ or 40¢, should be set at a level of 60¢ or more.

The Commission cites the use, as noted by the American Public Communications Council of so-called "vanity" numbers, such as MCI's "1-800-COLLECT" or AT&T's "1-800-CALL ATT" and "10 ATT". Such "vanity" access numbers can more easily be remembered by callers due to their use of words and phrases. Indeed, AT&T's offering in this area developed immediately after the introduction by MCI of its "vanity" access number, both recognizing the significant "user-friendliness" of such numbers. The increase in consumer acceptance and use of such numbers has been overwhelming over recent time. Indeed, in but a few short years, the use of vanity access numbers has grown to the point where they now account for approximately 25% of all dial around calls handled by IPPs. More importantly, and as a result, the incidence of dial around calls has skyrocketed and continues to escalate dramatically as time goes on. As a result, NJPA supports the implementation of an interim dial around compensation plan.

Since by definition one is dealing with a presumably limited period of time when structuring an "interim" plan, it makes sense to strive for simplicity. Thus, rather than "reinvent the wheel," NJPA suggests that the FCC might reasonably look

to the interstate dial around compensation plan it previously developed on an "interim" basis. As the Commission noted in its NPRM, it concluded that a per call plan would be desirable but determined to implement a flat fee compensation program as a substitute until a per call plan could be improved. The flat fee plan called for a payment of \$6 per phone per month.⁶ IPP industry statistics compiled by NJPA indicate that the intrastate/interstate ratio of calls is approximately 80/20 (and perhaps 85/15). If one extrapolates, applying this same ratio (80/20) to the volume of dial around and subscriber 800 calls, a fair amount of compensation for such calls would be \$24. [We would note that, while other parties may perhaps criticize such a simplistic approach, the \$6 dial around compensation level did not include compensation for subscriber 800 calls. Thus, NJPA believes that any extrapolation to a \$24 rate for intrastate dial around and subscriber 800 calls is conservative, as the level of compensation should actually include not only dial around calls, but 800-subscriber calls as well.]

RECLASSIFICATION OF INCUMBENT LEC-OWNED PAYPHONES

Classification of LEC Payphones as CPE

Paragraphs 42 through 48

NJPA strongly urges the Commission to adopt its tentative conclusion that incumbent LEC payphones should be treated as unregulated, detariffed customer premises equipment ("CPE"). We further support the FCC's tentative conclusion that

⁶NJPA stresses that by its suggestion that the flat plan be utilized, NJPA does not mean to indicate its agreement with the \$6 compensation level set therein. Rather, NJPA believes said rate to have been insufficient. However, given its existing acceptance by the Commission and its relative ease of implementation, and given the fact that it would be in place for only an interim period, its benefits outweigh its deficiency.

incumbent LECs should be required to provide to PSPs, on a non-discriminatory tariffed basis, all functionalities used in a LEC's delivery of payphone services.

In its Computer II decision,⁷ the Commission concluded that CPE should be unbundled to prevent improper cross-subsidization and that CPE should be detariffed to ensure that the costs associated with regulated services are separated from the competitive provision of the equipment used in conjunction with those services. The same rationale holds true in the instant matter. To prevent improper cross-subsidization by LECs with respect to pay telephone services, and to ensure that the costs associated with the regulated aspect of service should be separated from the competitive provision of payphones by LECs, such payphones must be treated as CPE. Indeed, NJPA urges that the FCC reconsider its tentative conclusion that LEC payphone service should not be required to be provided through a structurally separated affiliate.

NJPA has strenuously objected over the years to the improper cross-subsidization being implemented by BA-NJ with respect to its pay telephone operations. The question of whether BA-NJ cross-subsidizes its payphone operation cannot seriously be debated and, indeed, is demonstratively proven. In a recent proceeding, the BPU examined the rates charged by non-facilities based operator service providers ("OSPs").⁸ In its discussion, the BPU utilized a sample 5 minute, 18

⁷Final Decision, Amendment of Section 64.702 of the Commission's Rules and Regulations (Second Computer Inquiry), 77 FCC 2d 384 (1980) ("Computer II"), modified on recon., 84 FCC 2d 50 (1981), modified on further recon., 88 FCC 2d 512 (1981), aff'd sub. nom. Computer and Communications Industry Ass'n v. Fcc, 693 F.2d 198 (D.C. Cir. 1982), cert. denied, 461 U.S. 938 (1983).

⁸Regulation of Operator Service Providers, Proposed Repeal and New Rules, Docket No. TX95080361.

mile 0+ call for illustrative purposes. It noted that such call, if handled by BA-NJ, would cost \$1.10, but if handled by an OSP, would cost significantly greater. NJPA pointed out, however, that the comparison was unfair, specifically because BA-NJ improperly cross-subsidized its pay telephone operations. Thus, were the call properly billed (such that the end user rate exceeded BA-NJ's real costs), the BA-NJ rate would have been much, much higher. In fact, NJPA conducted a survey of many of its members in an effort to compile data with regard to the costs incurred by IPPs of calls carried by them.⁹ As demonstrated by NJPA, its costs to carry subject call (that is, its actual costs, exclusive of any profit) actually exceeded the end user rate charged by BA-NJ for the call. Please see Exhibit B annexed hereto.

The reasons for same are obvious: a) BA-NJ cross-subsidizes its payphone operations, and b) BA-NJ discriminates against its payphone competitors. The rates and charges imposed by BA-NJ upon NJPA members are higher than those imposed by BA-NJ upon itself for the same services.

As will be noted below, BA-NJ has discriminated in favor of its own payphone operations and against its competitors not only in terms of rates and charges but also with respect to operational issues. Given its long history of anti-competitive behavior, BA-NJ cannot be expected to eliminate cross-subsidies with respect to its payphone operations and to treat its payphone operation on an equal footing with its competitors absent a requirement that its payphone operation be provided through a structurally separated affiliate.

⁹Again, the data collected reflected a broad spectrum of IPP companies, big and small, and reflected a cross-section of the industry as a whole.

NJPA also supports a requirement that LECs be required to offer individual central office coin transmission services to IPPs under a non-discriminatory, public, tariffed offering. Such services should include answer and coin detection as well as any other services reasonably requested by an IPP. In addition, as suggested by the FCC, NJPA believes that fraud protection services must also be made available on an unbundled basis.

NONSTRUCTURAL SAFEGUARDS FOR BOC PROVISION OF PAYPHONE SERVICE

Paragraphs 58 through 66

The Commission concludes, pursuant to 47 U.S.C. § 276(b)(1)(C), that the non-structural safeguards adopted by the FCC in Computer III¹⁰ be implemented. As noted by the Commission, such safeguards include: (1) non-discriminatory access to network features and functionalities; (2) restrictions on the use of Customer Proprietary Network Information ("CPNI"); (3) network information disclosure rules; (4) non-discrimination in the provision, installation, and maintenance of services as well as non-discrimination reporting requirements; and (5) cost accounting safeguards. NJPA strenuously supports the adoption of at least those safeguards set forth in Computer III.

As discussed above, the history of BA-NJ's relationship toward its payphone competitors has been, to say the least, less than even-handed. Experiences cited by NJPA members easily support the need for the non-structural safeguards suggested by the Commission. It bears repeating that IPPs must purchase the primary element of their business — dial tone — from their largest competitor. That competitor (in

¹⁰Docket No. 90-623.

New Jersey, BA-NJ), thus turns out to be IPPs' sole source of supply at the same time as it seeks to compete with them.¹¹ NJPA has already noted the disparity between the rates and charges imposed by BA-NJ upon itself as compared to the exceedingly higher rates and charges imposed by BA-NJ upon its payphone competitors. Such discriminatory treatment extends, however, not just to the economic situation in which NJPA members find themselves, but also to the operating framework in which they struggle.

NJPA members have argued that the "COCOT" arm of BA-NJ improperly and without authorization has shared CPNI with BA-NJ's payphone division in order to provide its payphone division with an unfair and improper advantage over IPPs. NJPA members have experienced situations in which they will have reached agreement with a new premises owner and then placed an order with BA-NJ's COCOT office, only to find, a mere few days later, that the premises owner has suddenly been visited by BA-NJ representatives in an attempt to place a BA-NJ payphone on the premises. Such experiences or similar situations are not isolated or confined to one or two IPPs, but, rather, are shared by a group of NJPA members.

Nor do the difficulties stop once payphone service is begun by an IPP. NJPA members have complained of numerous instances of discriminatory treatment by BA-NJ with respect to installation activities. Examples have been cited of extensive

¹¹NJPA has used an oft cited analogy to illustrate the absurdity of this situation. It is as if Burger King and Wendy's were required to purchase their hamburgers from McDonald's (and could purchase them from no one else) while seeking to compete with McDonald's. Moreover, if McDonald's were to charge Burger King and Wendy's more than it charges itself (as does BA-NJ with respect to NJPA members), the situation is exacerbated. Even further, the largest of New Jersey's IPPs is but 1/500th the size of BA-NJ. Given the huge unfair economic advantage already possessed by BA-NJ, its abuse of its monopoly power is staggering.

delays on the part of BA-NJ before installing a service line for an IPP while service lines for its own payphones are installed on a timely basis. Such discriminatory actions cannot be countenanced; the Commission must strongly indicate its disapproval of such practices. The non-structural safeguards utilized under the Computer III decision will help. NJPA, however, suggests that the Commission must go further.

It is not enough to simply require that LECs not discriminate against its payphone competitors in favor of themselves. There may be instances or areas of activity in which LECs may be content to impose, even upon themselves, a substandard level of service. Were the only requirement to be one of non-discrimination, LECs would be free to continue such substandard treatment upon their competitors. As an example, NJPA has pointed to BA-NJ's poor record and practice with regard to repairs of its IPP telephone lines. Particularly on weekends, when repair service appears to be almost nonexistent, such problems can often be more than an annoyance for IPPs. If, for example, an IPP services a small business which utilizes the payphone as a combination public phone and business phone, an outage occurring after normal BA-NJ daytime hours or on a weekend can be very harmful. To have a LEC state that repairs must wait until the following week simply because it may be content to operate its payphone division in that manner (as is the position of BA-NJ), is simply unacceptable. Yet, in the absence of specific requirements mandating that LECs provide (using the present example) service on a timely basis, IPPs will be left with nothing but dissatisfied customers. NJPA

therefore respectfully suggests that the Commission impose more stringent requirements upon LECs in terms of their treatment of payphone competitors.

ABILITY OF BOCs TO NEGOTIATE WITH LOCATION PROVIDERS ON THE PRE-SUBSCRIBED INTERLATA CARRIER

Paragraphs 71 through 73

As the Commission notes, the 1996 Act, 47 U.S.C. § 276(b)(1)(D), directs the FCC to provide that BOCs have the right to negotiate with location providers with respect to interLATA carriers "unless the Commission determines ... that it is not in the public interest" to do so. At face value, such a requirement would appear to be fair, for it would allow the BOCs the same right to negotiate as is provided at present to IPPS. However, when one considers the profound changes which are likely to be visited upon the telecommunications scene over the next year or two, the case for the BOCs becomes much less clear.

Many states, including New Jersey, will probably authorize increased competition in both the local exchange area as well as with respect to interLATA services. Indeed, in New Jersey, the BPU just recently decided to authorize increased competition on a local level. In turn, BA-NJ, has requested that it be allowed, under the 1996 Act, to enter the interLATA telecommunications market. Few doubt that this will become a reality across the country in the near future. What then is the likely outcome of a situation in which BA-NJ and other BOCs will be able to provide both local service and interLATA service? Simple economic reality dictates that a LEC will automatically "choose" itself to provide interLATA services to its pay telephone operations. Given the significant market share possessed by LECs in the

pay telephone market, the probability is, therefore, that allowing the BOCs to choose their interLATA carriers will actually stifle competition — not encourage it.

At present, there are some telecommunications entities which specialize in providing or arranging pre-subscribed interLATA carrier service for BOC payphones. Such companies arrange with the premise owner to provide interLATA services with a company of a premise owner's choice. If the Commission allows BOCs the ability to choose their own interLATA carriers, the choice now available to the premise owners will, for all intents and purposes, disappear. Those companies arranging for the presubscription of BOC payphone interLATA service will go out of business, and any IXCs now providing service to BOC payphones will be replaced by the BOC itself. NJPA respectfully suggests that this would not be in the public interest. The result would be a decrease in competition and available services and a detriment to the public benefit. NJPA thus urges that the Commission conclude that allowing the BOCs to negotiate with location providers with respect to a pre-subscribed interLATA carrier not be permitted.

**ABILITY OF PAYPHONE SERVICE PROVIDERS TO NEGOTIATE WITH
LOCATION PROVIDERS ON THE PRE-SUBSCRIBED INTRALATA CARRIER**

Paragraphs 74 and 75

As noted by the Commission, the 1996 Act, 47 U.S.C. § 276(b)(1)(E), requires that payphone service providers have the right to negotiate with the location owner with respect to intraLATA carriers. As noted above, it is quite likely that increased competition in the intraLATA market will occur through the end of this decade. Many states have already begun to do so, including New Jersey. Thus, the Commission's tentative conclusion that PSPs be given the right to negotiate with

location providers concerning the choice of an intraLATA carrier is sensible and should be implemented. NJPA also agrees with the Commission's tentative conclusion that any intraLATA carrier pre-subscribed to a payphone be required to meet minimum standards for the routing and handling of emergency calls. Such a requirement is eminently reasonable and protects the public interest.

DOCUMENT OFF-LINE

This page has been substituted for one of the following:

- o An oversize page or document (such as a map) which was too large to be scanned into the RIPS system.
- o Microfilm, microform, certain photographs or videotape.
- o Other materials which, for one reason or another, could not be scanned into the RIPS system.

The actual document, page(s) or materials may be reviewed by contacting an Information Technician. Please note the applicable docket or rulemaking number, document type and any other relevant information about the document in order to ensure speedy retrieval by the Information Technician.

1 Hiskette